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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,734	04/15/2004	Garold B. Gaskill	SLA.1577	8815
55376	7590	10/05/2007		
David C. Ripma Sharp Laboratories of America, Inc. 5750 NW Pacific Rim Boulevard Camas, WA 97202			EXAMINER NGUYEN, KHAI N	
			ART UNIT	PAPER NUMBER
			2614	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/825,734	GASKILL, GAROLD B.	
	Examiner	Art Unit	
	Khai N. Nguyen	2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☒ Claim(s) 9 and 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>December 24, 2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement (IDS) submitted on December 24, 2004 was filed after the filing date of the instant application on April 15, 2004. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Objections

2. Claims 9 and 17 are objected to because of the following informalities: Both claims are missing a preposition "to". In both claims the sentence "- - the presence information is sent a caller" should be changed to "- - the presence information is sent to a caller". Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2, 4, 6-7, 10, 12, and 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Myllyla (U.S. Patent Number 6,542,436).

Regarding claim 1, Myllyla teaches a method of determining a user presence state, comprising:

in a telephonic device, for use by a user to receive and transmit an acoustic wave (**Figs. 1-2, col. 3 lines 57-65, col. 4 lines 5-9**), detecting orientation of the telephonic device to signal the user's presence state (**col. 2 lines 15-19**).

Regarding claims 2 and 10, Myllyla teaches the method wherein the telephonic device is a headset (**Fig. 1 – DEVICE “headset”, col. 2 lines 60-61**) and the relative orientation of a headset microphone to a headset earpiece determines a user presence state signal to be sent (**Fig. 1, col. 3 lines 57-67, i.e., a sound emitting transducer 1 “headset earpiece” and a sound receiving transducer 2 “headset microphone”**).

Regarding claims 4 and 12, Myllyla teaches the method wherein the telephonic device is a handset and the gravitation orientation of the handset determines a user presence state signal to be sent (**Fig. 2, Fig. 4 PROXIMITY/HANDFREE/HANDSET, col. 7 lines 20-23, i.e., hands-free mode “gravitation orientation”**).

Regarding claims 6 and 14, Myllyla teaches the method which includes providing a manual override mechanism on a handset to allow operation by a user not in a vertical orientation (**col. 6, lines 61-63, i.e., pressing a button to switch out of handset mode “vertical orientation”**).

Regarding claim 7, Myllyla teaches a method of determining a user presence state, comprising:

in a telephonic device, for use by a user to receive and transmit acoustic information (**Figs. 1-2, col. 3 lines 57-65, col. 4 lines 5-9**), detecting the user's presence via the orientation of the telephonic device relative to gravity (**Fig. 2, Fig. 4 PROXIMITY/HANDFREE/HANDSET, col. 7 lines 20-23, i.e., hands-free mode "gravitation orientation"**).

Regarding claim 15, Myllyla teaches a method of determining a user presence state, comprising:

in a telephonic device, for use by a user to receive and transmit acoustic information (**Figs. 1-2, col. 3 lines 57-65, col. 4 lines 5-9**), detecting the user's presence via the orientation of the telephonic device's headset microphone relative to the headset earpiece (**Fig. 1 – DEVICE "headset", col. 2 lines 60-61, col. 3 lines 57-67, i.e., a sound emitting transducer 1 "headset earpiece" and a sound receiving transducer 2 "headset microphone"**).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3, 11, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Myllyla in view of Bickford et al. (U.S. Patent Number 6,965,669, hereinafter "Bickford").

Regarding claims 3, 11, and 18, Myllyla discloses everything claimed as applied above (see claims 2, 10 and 15). However, Myllyla does not provide the group of user presence state signals consisting of "Listening and Able to Talk" or "Talking" when the orientation of the microphone is close to the mouth; "Listening" when the orientation of the microphone is in a position below the mouth, near the neck; "Busy" when the orientation of the microphone is in a position near the user's forehead; and "Gone" when the orientation of the microphone is at the back of the user's head.

In the same field of endeavor, Bickford teaches the checking of an audio device allocated to the user to determine the user presence state (**Bickford – Fig. 1 – 181A – 181N, col. 2 lines 35-38, i.e., available "Listening and Able to Talk" and unavailable "Busy or Gone"**), Bickford also teaches the positions of the headset and the orientation of the microphone related to the user's head (**Fig.1 – 180A-N, 190A-N, col. 4 lines 41-55**).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide Myllyla with the detail about checking the headset positions and the orientation of the microphone related to the user's head in order to improve the detection of the user presence state.

7. Claims 5, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Myllyla in view of Lands et al. (U.S. Patent Number 6,411,828, hereinafter "Lands").

Regarding claims 5 and 13, Myllyla discloses everything claimed as applied above (see claims 4 and 12). However, Myllyla does not provide the group of signals consisting of "Listening and Able to Talk" or "Talking" when the orientation of the handset is vertical; "Listening" when the orientation of the handset is face up; "Busy" when the orientation of the handset is on a side thereof; and "Gone" when the orientation of the handset is face down.

In the same field of endeavor, Lands teaches a user handset operates in a mode that is selected based on the device orientations which is determined by reference to gravity (**Figs. 2A-D, Figs. 3 A-B, Figs. 5 A-C – 170 Gravitational Sensor, col. 4 lines 22-25**), handset is vertically oriented (**col. 8 lines 9-10, lines 27-28, i.e., RX and TX "Listening and Able to Talk" or "Talking"**), handset is horizontally oriented (**col. 8 lines 11-13, i.e., RX audio signal to external speaker "Listening"**), and the operation may not be reinitiated when reoriented the handset (**col. 9 lines 10-14, i.e., "Busy and Gone"**).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide Myllyla with the detail about the orientation

of the handset related to the gravity in order to improve the detection of the user presence state.

8. Claims 8-9, and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Myllyla in view of Randall et al. (U.S. Patent Number 7,248,677, hereinafter "Randall").

Regarding claims 8-9, and 16-17, Myllyla discloses everything claimed as applied above (see claims 7 and 15), but does not provide that the presence information is sent to all people on a buddy list and also sent to a caller. However, Randall teaches the user presence information such as "away from the device but back soon" or "do not disturb" (**Randall – col. 20 lines 12-16**), and the presence information can be sent to all people on a buddy list and also sent to a caller (**Randall – col. 20 lines 22-26**).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide Myllyla with the detail to send the presence information to all people on a buddy list and a caller in order improve the communication of the user presence state.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Castile et al. (U.S. Patent Number 5,826,626) teach a system and method to detect the presence of a user using acoustic waves.

Michaelis (U.S. Publication Number 2004/0022394 A1) teaches a method and system to use acoustic signals to detect the position of a user in relative to the microphone in order to reduce echo.

Irvin et al. (U.S. Patent Number 7,010,332) teach a method and system to control the power consumption of a wireless headset based on the headset orientation or user proximity.

Nevermann (U.S. Publication Number 2003/0062907 A1) teaches a system and a method to detect the proximity of a user based on RF energy.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khai N. Nguyen whose telephone number is (571) 270-3141. The examiner can normally be reached on Monday - Thursday 6:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ahmad F. Matar can be reached on (571) 272-7488. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2614

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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9/27/2007

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